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In re Application of	:	DECISION ON
MACKICHAN, Mary Lee et al.	:	
Application No. 10/530,000	:	
PCT No.: PCT/US2003/031320	:	
Int. Filing Date: 01 October 2003	:	PETITION UNDER
Priority Date: 01 October 2002	:	
Attorney's Docket No.: CHIR0006-101	:	
For: ANTI-CANCER AND ANTI-INFECTUOUS	:	
DISEASE COMPOSITIONS AND METHODS	:	37 CFR §1.137(b)
FOR USING SAME	:	

This petition decision is in response to Applicant's "PETITION TO REVIVE APPLICATION UNDER 37 CFR 1.137(b)," filed on 25 January 2007. The Petition identifies the Applicant as being entitled to small entity status. The fee for the Petition in the amount of \$1500 has been submitted.

**BACKGROUND**

On 01 October 2003, the above-named international application was filed with claimed foreign priority to 01 October 2002. Under 35 USC §1.371(b) and under 37 CFR §1.495(b), Applicant must submit the items identified in 35 USC §1.371(b) no later than 30 months from the date of foreign priority upon entrance into the national stage of examination. In the instant application, the thirty-month date would be 01 April 2005.

On 31 March 2005, a "Transmittal Letter To The United States Designated/Elected Office (DO/EO/US) Concerning A Submission Under 35 USC 371" was received in the United States Patent and Trademark Office (USPTO) that included an "express request to begin national examination procedures" under 35 USC §371(f). A Notification of Missing Requirements was mailed by the USPTO on 13 September 2005, which required an oath or declaration of the inventors in compliance with 37 CFR 1.497(a) and (b). The application went abandoned on 13 April 2006 for failure to respond to the Notification of Missing Requirements.

A purported submission of the missing requirements on 19 January 2007 was accompanied by a "PETITION TO REVIVE APPLICATION UNDER 37 CFR 1.137(b)" with the petition fee of \$1500 as provided for in 37 CFR §1.17(m) and with a new declaration of the inventors.

Since the missing requirements were not timely submitted after the Notification of Missing Requirements, the instant application went abandoned on 13 April 2006.

### **DISCUSSION**

Under 37 CFR §1.137(b), a grantable petition for revival of an unintentionally abandoned application must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 CFR §1.17(m); (3) a statement under 37 CFR §1.137(b)(3) that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR §1.137(b) was unintentional; and (4) any terminal disclaimer that may be required under 37 CFR §1.137(d).

The Petitioner has submitted the basic national filing fee of \$300, has submitted petition fee of \$1500, and has stated that the delay was unintentional; however, the newly-submitted declaration of the inventors is not the required reply to the Notification of Missing Requirements in that it is a compilation of three separate declarations rather than the required single declaration. A single declaration of all of the inventors or in the alternative complete copies of each of the three individually signed declarations is required in order for the declaration to constitute the required reply to the Notification of Missing Requirements. No terminal disclaimer is required.

### **DECISION**


For the reasons set forth above, the petition under 37 CFR §1.137(b) is hereby **DISMISSED WITHOUT PREJUDICE.**

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional

petition fee is required. Failure to timely submit the proper reply will result in ABANDONMENT. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner of Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.

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